



House of Representatives

General Assembly

File No. 157

January Session, 2007

Substitute House Bill No. 6391

House of Representatives, March 27, 2007

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

**AN ACT CONCERNING INVOLUNTARY ADMINISTRATION OF
PSYCHIATRIC MEDICATION FOR PURPOSES OF COMPETENCY TO
STAND TRIAL.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (k) of section 54-56d of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2007*):

4 (k) (1) When any placement order for treatment is rendered or
5 continued, the court shall set a date for a hearing, to be held within
6 ninety days, for reconsideration of the issue of the defendant's
7 competency. Whenever the court (A) receives a report pursuant to
8 subsection (j) of this section which indicates that (i) the defendant has
9 attained competency, (ii) the defendant will not attain competency
10 within the remainder of the period covered by the placement order,
11 (iii) the defendant will not attain competency within the remainder of
12 the period covered by the placement order absent administration of
13 psychiatric medication for which the defendant is unwilling or unable

14 to provide consent, or (iv) the defendant would be eligible for civil
15 commitment pursuant to subdivision (2) of subsection (h) of this
16 section, or (B) receives a report pursuant to subparagraph (A)(iii) of
17 subdivision (2) of subsection (h) of this section which indicates that (i)
18 the application for civil commitment of the defendant has been denied
19 or has not been pursued by the Commissioner of Mental Health and
20 Addiction Services, or (ii) the defendant is unwilling or unable to
21 comply with a treatment plan despite reasonable efforts of the
22 treatment facility to encourage the defendant's compliance, the court
23 shall set the matter for a hearing no later than ten days after the report
24 is received. The hearing may be waived by the defendant only if the
25 report indicates that the defendant is competent. The court shall
26 determine whether the defendant is competent or is making progress
27 toward attainment of competency within the period covered by the
28 placement order. If the court finds that the defendant is competent, the
29 defendant shall be returned to the custody of the Commissioner of
30 Correction or released, if the defendant has met the conditions for
31 release, and the court shall continue with the criminal proceedings. If
32 the court finds that the defendant is still not competent but that the
33 defendant is making progress toward attaining competency, the court
34 may continue or modify the placement order. If the court finds that the
35 defendant is still not competent and will not attain competency within
36 the remainder of the period covered by the placement order absent
37 administration of psychiatric medication for which the defendant is
38 unwilling or unable to provide consent, the court shall proceed as
39 provided in subdivisions (2), [and] (3) and (4) of this subsection. If the
40 court finds that the defendant is eligible for civil commitment, the
41 court may order placement of the defendant at a treatment facility
42 pending civil commitment proceedings pursuant to subdivision (2) of
43 subsection (h) of this section.

44 (2) If the court finds that the defendant will not attain competency
45 within the remainder of the period covered by the placement order
46 absent administration of psychiatric medication for which the
47 defendant is unwilling or unable to provide consent, and after any
48 hearing held pursuant to subdivision (3) of this subsection, the court

49 may order the involuntary medication of the defendant if the court
50 finds by clear and convincing evidence that: (A) To a reasonable
51 degree of medical certainty, involuntary medication of the defendant
52 will render the defendant competent to stand trial, (B) an adjudication
53 of guilt or innocence cannot be had using less intrusive means, (C) the
54 proposed treatment plan is narrowly tailored to minimize intrusion on
55 the defendant's liberty and privacy interests, (D) the proposed drug
56 regimen will not cause an unnecessary risk to the defendant's health,
57 and (E) the seriousness of the alleged crime is such that the criminal
58 law enforcement interest of the state in fairly and accurately
59 determining the defendant's guilt or innocence overrides the
60 defendant's interest in self-determination.

61 (3) (A) If the court finds that the defendant is unwilling or unable to
62 provide consent for the administration of psychiatric medication, and
63 prior to deciding whether to order the involuntary medication of the
64 defendant under subdivision (2) of this subsection, the court shall
65 appoint a health care guardian who shall be a licensed health care
66 provider with specialized training in the treatment of persons with
67 psychiatric disabilities to represent the health care interests of the
68 defendant before the court. Notwithstanding the provisions of section
69 52-146e, such health care guardian shall have access to the psychiatric
70 records of the defendant. Such health care guardian shall file a report
71 with the court not later than thirty days after his or her appointment.
72 The report shall set forth such health care guardian's findings and
73 recommendations concerning the administration of psychiatric
74 medication to the defendant, including the risks and benefits of such
75 medication, the likelihood and seriousness of any adverse side effects
76 and the prognosis with and without such medication. The court shall
77 hold a hearing on the matter not later than ten days after receipt of
78 such health care guardian's report and shall, in deciding whether to
79 order the involuntary medication of the defendant, take into account
80 such health care guardian's opinion concerning the health care
81 interests of the defendant.

82 (B) The court, in anticipation of considering continued involuntary

83 medication of the defendant under subdivision (4) of this subsection,
84 shall order the health care guardian to file a supplemental report
85 updating the findings and recommendations contained in the health
86 care guardian's report filed under subparagraph (A) of this
87 subdivision.

88 (4) If, after the defendant has been found to have attained
89 competency by means of involuntary medication ordered under
90 subdivision (2) of this subsection, the court determines by clear and
91 convincing evidence that the defendant will not remain competent
92 absent the continued administration of psychiatric medication for
93 which the defendant is unable to provide consent, and after any
94 hearing held pursuant to subdivision (3) of this subsection and
95 consideration of the supplemental report of the health care guardian,
96 the court may order continued involuntary medication of the
97 defendant if the court finds by clear and convincing evidence that: (A)
98 To a reasonable degree of medical certainty, continued involuntary
99 medication of the defendant will maintain the defendant's competency
100 to stand trial, (B) an adjudication of guilt or innocence cannot be had
101 using less intrusive means, (C) the proposed treatment plan is
102 narrowly tailored to minimize intrusion on the defendant's liberty and
103 privacy interests, (D) the proposed drug regimen will not cause an
104 unnecessary risk to the defendant's health, and (E) the seriousness of
105 the alleged crime is such that the criminal law enforcement interest of
106 the state in fairly and accurately determining the defendant's guilt or
107 innocence overrides the defendant's interest in self-determination.
108 Continued involuntary medication ordered under this subdivision
109 may be administered to the defendant while the criminal charges
110 against the defendant are pending and the defendant is in the custody
111 of the Commissioner of Correction or the Commissioner of Mental
112 Health and Addiction Services. An order for continued involuntary
113 medication of the defendant under this subdivision shall be reviewed
114 by the court every one hundred eighty days while such order remains
115 in effect. The court shall order the health care guardian to file a
116 supplemental report for each such review. After any hearing held
117 pursuant to subdivision (3) of this subsection and consideration of the

118 supplemental report of the health care guardian, the court may
119 continue such order if the court finds, by clear and convincing
120 evidence, that the criteria enumerated in subparagraphs (A) to (E),
121 inclusive, of this subdivision are met.

122 [(4)] (5) The state shall hold harmless and indemnify any health care
123 guardian appointed by the court pursuant to subdivision (3) of this
124 subsection from financial loss and expense arising out of any claim,
125 demand, suit or judgment by reason of such health care guardian's
126 alleged negligence or alleged deprivation of any person's civil rights or
127 other act or omission resulting in damage or injury, provided the
128 health care guardian is found to have been acting in the discharge of
129 his or her duties pursuant to said subdivision and such act or omission
130 is found not to have been wanton, reckless or malicious. The
131 provisions of subsections (b), (c) and (d) of section 5-141d shall apply
132 to such health care guardian. The provisions of chapter 53 shall not
133 apply to a claim against such health care guardian.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2007	54-56d(k)

JUD*Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Net State Impact	GF - Cost Avoidance	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill facilitates the administrative process by which the mental competency of a criminal defendant is maintained for purposes of conducting a trial. This could yield a net savings to the state. Note that the bill may result in a potential cost to the Department of Correction (DOC) if the court designates specific pharmaceuticals to be administered. The DOC could be required to provide a more expensive pharmaceutical rather than the less costly prescription recommended by the University of Connecticut Health Center.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6391*****AN ACT CONCERNING INVOLUNTARY ADMINISTRATION OF
PSYCHIATRIC MEDICATION FOR PURPOSES OF COMPETENCY
TO STAND TRIAL.*****SUMMARY:**

In some circumstances, courts may order The Department of Mental Health and Addiction Services (DMHAS) to give defendants psychiatric medication without their consent in order to restore them to competency so that their trial can resume.

Currently, a court's authority to order involuntary medication ends when the defendant's competency is restored. The bill, instead, allows courts to extend these orders for as long as the criminal charges are pending. It applies to situations in which a court has found, by clear and convincing evidence, that the defendant (1) is likely to relapse if the medication is discontinued and (2) because of mental illness, is unable to give informed consent to continue taking it.

The bill establishes procedures and legal standards for making this determination. They mirror existing laws governing involuntary medication of defendants in order to restore them to competency.

EFFECTIVE DATE: October 1, 2007

PROCEDURE

With a few exceptions, the law requires courts to order the DMHAS to treat criminal defendants who cannot be tried because their mental condition prevents them from understanding the court proceedings or participating in their defense.

Before doing so, the court must appoint a health care guardian to

examine the defendant and make recommendations concerning the appropriateness of following this course.

By law, the defendant's court-appointed health care guardian must notify the court whenever the defendant's competency has been restored. The court must then hold a hearing within 10 days to determine whether the trial should resume.

The bill permits the court also to determine at the hearing whether it is appropriate to order that an existing involuntary medication order remain in place. It requires the court to obtain a supplemental health care guardian report before any hearing in which this issue is likely to arise.

The supplemental report must update prior reports, including the guardian's recommendations and findings on the (1) risks and benefits of the medication, (2) the likelihood and seriousness of its side effects, and (3) the defendant's prognosis with and without medication.

LEGAL STANDARD

The bill sets the same legal standard for continuing medication orders as currently applies to involuntary orders intended to restore competency. The court must consider the health care guardian's supplemental report and recommendations and find, by clear and convincing evidence, that:

1. the seriousness of the criminal charges are such that the state's interest in fairly and accurately determining the defendant's guilt or innocence outweighs the defendant's interest in self determination;
2. to a reasonable degree of medical certainty, the defendant will remain competent to stand trial if involuntarily medicated;
3. there is no less intrusive way to adjudicate the defendant's guilt or innocence;
4. the proposed medication regimen is narrowly tailored to

minimize intrusion on the defendant's liberty and privacy interests; and

5. the regimen will not unnecessarily risk the defendant's health.

The court must obtain supplemental reports and conduct hearings every 180 days for as long as the order is in place. It may extend an involuntary medication order so long as there is clear and convincing evidence to support the five required findings described above.

BACKGROUND

Competency

The law recognizes two types of competence in criminal cases: competency to stand trial and competency to consent, or withhold consent, to psychiatric treatment, including medication. Different standards apply to each.

A defendant is competent to stand trial if he understands the court proceedings and can participate or assist in his defense. The law presumes that all defendants are competent, but must hold hearings if this comes into question.

A defendant may be competent to stand trial but too mentally ill to make medical decisions independently (i.e., incompetent to give or withhold consent knowingly and voluntarily). When a court is considering whether to order the defendant to take psychiatric medication, the law requires it to first appoint a health care guardian to represent the defendant's medical interests. The guardian must be a licensed health care provider with specialized training in treating people with psychiatric disabilities.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (03/14/2007)